

Friday, 3 January 1947

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDING IN CHAMBERS

On

Paper No. 628 - Application of the
prosecution under Rule 6(b)(1), pertaining to
IPS Document Nos. 8466, 8467, 8471 and 8478.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

F. M. WHALEN
Court Reporter
IMTFFE.

APPEARANCES:

For the Prosecution Section:

MR. FRANK S. TAVENNER, JR.;
CAPTAIN JAMES J. ROBINSON, USNR;
MR. CARLISLE W. HIGGINS; and
COMMANDER CHARLES T. COLE, USNR.

For the Defense Section:

MR. WILLIAM LOGAN, JR., Counsel for
the Accused KIDO, Koichi;
MR. GEORGE F. BLIFFETT, Counsel for
the Accused TOJO, Hideki; and
MR. MICHAEL LEVIN, Counsel for
the Accused SUZUKI, Teiichi.

For the Office of the General Secretary,
IMTFE:

MR. CHARLES A. MANTZ, Clerk of the
Court.

Proceeding was begun at 1300.

THE PRESIDENT: This is paper 628, an application on behalf of the prosecution under Rule 6(b)(1) in respect of documents 8466, 8467, 8471 and 8478. Captain Robinson, is it?

CAPTAIN ROBINSON: Yes, sir. These are transcripts for the most part in the case of the first two requests, and paragraph 3 of page 3 is for excerpts from an official report of the Dutch Government on a Dutch hospital ship.

MR. LOGAN: Excuse me. Maybe I can cut this short. The defense does not desire any excerpts.

THE PRESIDENT: You have no objection to the application?

MR. LOGAN: No, none at all.

THE PRESIDENT: The order as prayed.

MR. LOGAN: But there is something that we would like to discuss at this time, and that is Rule 6(b)(1) with respect to defense. As you know, many motions were made by the prosecution, and I know of no instance there their application was denied. And in reality the exception of the rule has really become the rule itself. In order to make these applications involves a great deal of time and work and

effort, and we were wondering if whether or not the prosecution would have any objection to a waiver of that portion of the rule that we should make such an application for permission to have excerpts from any documents on the defendants' case.

MR. HIGGINS: We think that the application of the rule as stated has been very beneficial and kept the record down within reasonable bounds, saved time. It ought to be continued. It has served a very useful and very satisfactory purpose.

MR. LOGAN: I am not criticizing the application of the rule, Mr. Higgins. What I mean is this, that when excerpts were requested by the prosecution they were granted, and I don't recall one instance when they were not granted.

MR. HIGGINS: We were very careful. The care was taken in the selection.

MR. LOGAN: Yes. Well, but it operated in this way: That when an application was made by the prosecution, for example, of part of an affidavit or part of testimony, that the only way it was beneficial to the defense was in obtaining excerpts of the balance of the affidavit or the balance of the particular piece of testimony from which the excerpt was taken.

Now, in our situation we, too, will only

desire certain excerpts of a document. We have no desire to take more from a document than what will be beneficial to the defense, and the operation of the rule insofar as limiting you to excerpts was not applied at all, that is, the length of that excerpt from a document.

THE PRESIDENT: The rule cannot be applied to limit the defense.

MR. LOGAN: The only way it could possibly benefit you would be to have it operate the same way it did to us, and that is where we wanted part of a document that we would have to process the balance of the document for the prosecution. Of course, we see no necessity for that.

MR. HIGGINS: A great many of your documents will be in Japanese, I take it.

MR. LOGAN: We will have Japanese and English.

MR. HIGGINS: Will you have the full document in Japanese and English? We would be, I believe, not interested in the Japanese. But if you have a Japanese document we would like to have the whole document.

MR. LOGAN: Where we have a Japanese document from which we intend to take excerpts, I believe it is our intention to have the entire document processed.

MR. HIGGINS: In English?

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MR. HIGGINS: In English?

MR. LOGAN: In English.

THE PRESIDENT: We cannot undertake now, Mr. Logan, to do what you have applied to me to compel them to do, that is, to read such further material as the prosecution wished.

MR. LEVIN: Not only that, Mr. President, but I had in mind that we would, if perchance we did not process everything that they wanted, that we, on a request, we would be very glad to comply with that request. We have been in the position where additional material, although it was processed, if we desire to offer it in evidence, in the great majority of cases it has been left to us to offer it in evidence in our presentation of the case. That might be done either while the defense is introducing its case, or, if not, by the prosecution offering additional excerpts as additional testimony at the close of our case.

MR. LOGAN: With respect to the defense reading of evidence anything that the prosecution desires, of course, on the prosecution's case that was very sparingly exercised or permitted to us.

THE PRESIDENT: You don't want translations from them, Mr. Higgins?

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MR. HIGGINS: We would like to have a translation of the document, because if they put in a

document that way somebody will have to translate it, and, of course, they will do that, but--

THE PRESIDENT: They haven't the outfit that you have for translation.

MR. HIGGINS: But they will know the entire contents of the document or they wouldn't know what to select from it.

THE PRESIDENT: They will give you the whole document.

MR. HIGGINS: They will give us the document in Japanese which is worth nothing to us in the hurry that we will be in.

THE PRESIDENT: With all your translation facilities? You have got ten times as much as they they told us in court.

MR. HIGGINS: We plan to transfer to them the use of whatever we can spare.

THE PRESIDENT: That could be a matter for mutual arrangement.

MR. LOGAN: Could we make this suggestion: Put in any document from which we have an excerpt. If the prosecution should so request it, we would have a translation of the entire document in English for the prosecution. Would that meet your approval? Because I imagine there are many documents that you would

not be interested in having the entire English translation of.

THE PRESIDENT: In other words, they will give you that without an order by the Court.

MR. LOGAN: Upon your request after we have offered the excerpt if you want the entire document.

MR. TAVENNER: I don't see what your objection is to following the procedure we have been following of presenting those excerpts seven days ahead, which would enable us to see the document and determine both as to translation and as to subject matter whether there is anything else we want in it.

MR. LOGAN: It is the mechanical facilities, Mr. Tavenner, we haven't got them, we haven't got the help, we haven't got the facilities. It is almost beyond--

MR. TAVENNER: You wouldn't have to furnish it to us in Japanese, you would only have to furnish it to us in English.

MR. LOGAN: If we were required to translate the entire document that would be tremendous in itself.

THE PRESIDENT: You are not likely to come to an agreement just now. Better think it over. Better put it in writing what you want, and put your answer in writing, Mr. Higgins.

MR. HIGGINS: Yes.

MR. LOGAN: Yes. I thought we could have an informal discussion here to let you know what we have in mind. We will put it in writing and submit it later.

THE PRESIDENT: Yes. All right.

MR. LOGAN: Maybe we can get together on it.

THE PRESIDENT: I hope so.

(Whereupon, at 1315, the proceeding was concluded.)

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